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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re M.A., a Person Coming Under
the Juvenile Court Law.

B277296

(Los Angeles County
Super. Ct. No. DK14543)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

E.A.,

Defendant and Appellant

APPEAL from an order of the Superior Court of Los
Angeles County, Annabelle G. Cortez, Judge. Affirmed.

Matthew J. Hardy, under appointment by the Court of
Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

Elias A. (Father) and Allison W. (Mother) are the parents of M.A., who was just over two years old at the time the juvenile court found him to be a dependent child and assumed jurisdiction to ensure his well-being. The court's jurisdiction findings were predicated on allegations of domestic violence between Mother and Father, as well as allegations that marijuana use by Mother and Father rendered them incapable of providing regular care for M.A. Father does not challenge the juvenile court's finding that the violent altercations he had with Mother warranted dependency jurisdiction; instead, he challenges only the finding that his marijuana use placed M.A. at risk of harm. We consider whether to exercise our discretion to review the single jurisdiction finding Father contests.

I. BACKGROUND

On June 26, 2015, Mother and Father engaged in a verbal argument that escalated into a physical altercation. Father grabbed Mother by the throat with one hand while holding M.A. with his other hand. Mother attempted to protect herself by backing away from Father. Father "became enraged from [Mother's] efforts to protect herself and dropped [M.A.] onto the floor." Father then proceeded to strangle Mother with both hands and punched her twice in the face using his fists. Mother eventually escaped into another room in the home and called 911.

The Los Angeles County Department of Children and Family Services (the Department) was notified of the domestic violence incident between Mother and Father, and the Department opened an investigation into M.A.'s welfare. A Department social worker met with Mother, and she told the social worker that the June 26, 2015, altercation was "the first

time that it became physical.” Mother also told the social worker that she smokes marijuana and stated that both she and Father had medical marijuana cards.

On November 30, 2015, the Department was notified of another incident of domestic violence between Mother and Father that occurred five days earlier. They had engaged in a verbal argument that once again escalated into a physical altercation (but this time, the fight did not occur in M.A.’s presence). Father “got upset and threw a chair at [M]other” but missed. Mother ran into a bedroom and Father followed her, grabbed her by both hands, and then punched her in the face. Father then grabbed Mother by the hair, threw her onto the floor, kicked her, and threatened to kill her. As the altercation continued, Father stepped outside the bedroom and Mother shut the bedroom door. Father then proceeded to kick the door and “knocked [it] off the hinges” before throwing it at Mother. The police responded to a radio call reporting the domestic violence incident and arrested Father for spousal abuse.¹

Department social workers thereafter interviewed Mother and Father on December 4, 2015. Mother was observed to have a black eye. Mother initially responded “yes” when asked if she suffered the eye injury during the most recent fight with Father, but she later told the social worker that she hurt her eye as a result of a fall. Father denied ever being physically abusive to Mother. Following the interviews, the Department assessed M.A. to be at high risk of future harm due to the multiple incidents of

¹ Father was charged with battery and later entered a plea of no contest. The criminal court placed Father on probation for three years.

domestic violence. The Department applied for and obtained an expedited removal warrant to remove M.A. from his parents' custody.

The Department later filed a three count petition alleging M.A. was a child described by Welfare and Institutions Code section 300, subdivisions (a) and (b).² Count a-1 of the petition related the basic facts of the two domestic violence incidents we have described and alleged under section 300, subdivision (a) that "[t]he violent conduct by the father to the mother, and the mother's failure to protect the child, endangers the child's physical health and safety, creates a detrimental home environment, and places the child at risk of serious physical harm, damage, danger and failure to protect." Count b-1 of the petition alleged the same facts as the a-1 count, but invoked the provisions of section 300, subdivision (b) as a basis for jurisdiction. Count b-2 of the petition alleged M.A. was at substantial risk of suffering serious physical harm for another reason, namely, that Mother "has a history of substance abuse and is a current user of marijuana, which renders [Mother] incapable of providing regular care and supervision of the child."

The Department again interviewed Mother and Father after filing the dependency petition. Mother reiterated that she and Father smoke marijuana and possess medical marijuana cards. Mother explained she and Father "rotate" while taking care of M.A., meaning that either she or Father smokes marijuana outside the home while the other parent is inside the home watching M.A. Mother stated that "[Father] smokes 3 to 4

² Statutory references that follow are to the Welfare and Institutions Code.

times more than me.” Mother added that she and Father store their marijuana in the arm rest of the family car but that M.A. is “‘usually’ in his car seat and unable to ‘reach it.’” Father did not provide any information to the social worker regarding his own use of marijuana, but confirmed the marijuana is stored in the family car.

After the additional interviews with the parents, the Department filed a first amended petition that added a new count (numbered b-3) alleging Father had a history of illicit drug use and was a current user of marijuana, which rendered him incapable of providing regular care for M.A. within the meaning of section 300, subdivision (b). (It is only this count that Father challenges on appeal.) Count b-3 of the amended petition specifically alleged “[F]ather abused marijuana in the presence of [M.A.] on multiple occasions and stored his medical marijuana in the arm rest of the family car.”

The juvenile court held a hearing to determine whether to assume jurisdiction over M.A. based on the allegations in the first amended petition. Father was not present at the hearing. Mother testified she did not use marijuana “in front of [M.A.],” and noted that if she and Father ever rotated their marijuana use (with one parent smoking outside while the other cared for M.A.) “it was already after [M.A.’s] bedtime.”

After hearing testimony from Mother, counsel for all parties argued. The Department’s attorney asked the court to sustain the section 300 petition in full. With regard to count b-3 concerning Father’s substance abuse, the Department noted Father had been a “no show” for scheduled drug tests prior to the hearing, and argued that “given [that M.A. is] at a very young age and need[s] . . . constant care and supervision there is a

current nexus to . . . Father’s marijuana consumption.” Counsel for M.A. stated his view that “this case really comes to domestic violence” and asked the juvenile court to sustain the counts of the amended petition alleging the parents had engaged in such violence. Father’s attorney asked the court to dismiss the b-3 count in the amended petition, arguing there was no nexus between Father’s marijuana use and his ability to care for M.A., and additionally asked the court to strike the other counts alleged in the petition because Father had denied engaging in a physical altercation with Mother. Mother’s attorney asked the court to sustain the domestic violence allegations.

The juvenile court found all counts of the first-amended petition true by a preponderance of the evidence. As to the counts alleging M.A. was at risk of harm by virtue of Mother and Father’s marijuana use, the court found that M.A. was a “child of a young and tender age,” which would exacerbate the danger of marijuana use by the parents and prevent the parents from noticing and following up on concerning behavior by M.A. The court declared M.A. a dependent child and ordered him removed from Father’s custody and placed with Mother. Father was ordered to submit to 10 random or on-demand drug tests and to participate in domestic violence and parenting programs.

II. DISCUSSION

Father challenges only one of four sustained jurisdictional findings on appeal: the b-3 count alleging M.A. was at substantial risk of suffering serious physical harm because of Father’s marijuana abuse. No assignment of error is made to the juvenile court’s decision to sustain the domestic violence counts alleged in the dependency petition, and with good reason—the evidence

supporting those allegations (including Mother’s own hearing testimony) was quite strong.

We therefore confront the sort of situation our Supreme Court addressed in a 2013 case, one where there are multiple jurisdictional findings, any one of which would justify a juvenile court’s decision to assume dependency jurisdiction over a child. (*In re I.J.* (2013) 56 Cal.4th 766, 773 (*I.J.*).) As our Supreme Court held, “a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.’ (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451, 90 Cal.Rptr.3d 44.)” (*I.J.*, *supra*, at p. 773.)

Here, we follow the course outlined in *I.J.* Substantial evidence supports the uncontested counts in the petition alleging M.A. was at risk of harm by virtue of Mother and Father’s domestic violence. We therefore need not, and do not, consider whether the substance abuse allegations in count b-3 of the petition were also supported by substantial evidence.³

³ Citing *In re Drake M.* (2012) 211 Cal.App.4th 754 (*Drake M.*), Father asks us to exercise our discretion to reach the merits of his challenge to count b-3. We respectfully decline. Most fundamentally, and in contrast to the facts of *Drake M.*, Father’s status as an “offending” parent does not turn on the validity of count b-3; his neglectful conduct is also reflected in the sustained domestic violence counts of the petition. (Compare *id.* at p. 763.) Father has also mounted no adequate challenge to a dispositional order for which the b-3 count finding may serve as the predicate. (Cal. Rules of Court, rule 8.204(a)(1)(B); see also *Drake M.*, *supra*,

DISPOSITION

The juvenile court's order is affirmed.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

KUMAR, J.^{*}

at pp. 762-763.) And Father's assertion that the b-3 count jurisdictional finding could be prejudicial in the future because it might persist as a basis for dependency jurisdiction even if Father and Mother were to "separate finally and the issues of domestic violence be resolved" is too speculative to warrant exercise of our discretion to review his challenge. (See *In re I.A.* (2011) 201 Cal.App.4th 1484, 1493-1494 [party asserting consequences of a finding beyond jurisdiction warrant discretionary review must suggest a "specific legal or practical consequence" of the finding].)

^{*} Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.